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No. 91-638

In The

Supreme Court of the United States

October Term, 1991

MARIBEL SANTOS,

Petitioner,

vs.

D. O. RODRIGUEZ AND CITY OF DALLAS,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the Constitution imposes upon a police officer an affirmative obligation to protect people from the criminal acts of others.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A) and the memorandum order and judgment of the district court (Pet. App. B) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 10, 1991. The petition for a writ of certiorari was filed on October 8, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

On Friday night November 7, 1986, Petitioner Maribel Santos decided to go dancing at "The Ritz," a nightclub in Dallas, Texas. Santos stayed at "The Ritz" until early Saturday morning November 8, 1986. By the time she was ready to leave, she was intoxicated. Santos claims that, as she was leaving, she was attacked by three men. She claims that the three men took her to a wooded area nearby where they beat her, raped her and knocked her unconscious. Santos claims that, after a short time, she regained consciousness, found a Dallas police officer and reported the rape to him. Santos claims that the officer, Respondent D.O. Rodriguez, told her that she was drunk and advised her to go home. Santos, apparently discouraged by the officer's alleged statements, decided to leave the officer and seek help elsewhere. Santos claims she sought help by pounding on the door of the "The Ritz." The answer from inside came back "Sorry, we're closed." Santos claims that, at this point, she was scared, angry, disappointed and in shock. She claims that she crouched behind an automobile to "pull herself together." While she was behind the automobile, Santos claims that three men approached her and asked if she needed help. Distrustful, she asked them to leave. At the same time, a fourth man approached her and told the other three men "It's okay, I already got her some help." The three men left Santos alone with the fourth man. Santos claims that this fourth man grabbed her, took her to a secluded area and proceeded to beat her and rape her. After this second beating and rape, Santos made her way to a nearby motel and telephoned for help.

Santos blames Officer Rodriguez for the second rape. Santos claims that Officer Rodriguez should have arrested her for public intoxication. Santos claims that, had she been arrested, she would have never been raped a second time. Santos alleges that Officer Rodriguez negligently failed to protect her from the criminal acts of another. Santos sued Rodriguez under 42 U.S.C. §1983. The district court granted Officer Rodriguez's motion for summary judgment and the court of appeals affirmed the district court's decision.

ARGUMENT

The petition for writ of certiorari should be denied for the following reasons: (1) the question before the Court has already been decided by the Court's previous decisions; (2) the lower court's decision reflects sound public policy; and (3) no conflict exists among the circuits.

I. The Only Question Before the Court Has Already Been Decided By the Court's Previous Decision.

The question before this Court is whether the Constitution imposes upon a police officer an affirmative obligation to protect people from the criminal acts of others. This Court answered that question recently in *DeShaney v. Winnebago Soc. Serv.*, 489 U.S. 189 (1989). In *DeShaney*, this court held that nothing in the language of the Due Process Clause of the Fourteenth Amendment requires the state to protect the life, liberty, and property of its citizens against invasion by private actors. *Id.*, at 195. This Court

has recently decided the issue involved in the instant case and, therefore, there is no need to grant certiorari.

II. The Fifth Circuit's Decision Reflects Sound Public Policy.

The lower court implicitly held that the Constitution does not require a police officer to arrest a person because the person has committed an offense or because the person, if arrested, would be protected from the criminal acts of others.

It is sound public policy to allow officers discretion in making arrests. To hold otherwise is to ignore the realities of limited law enforcement resources and to lose the benefits of officers' experience and good judgment. It is also sound public policy that police officers not be charged with an affirmative obligation to protect people from the criminal acts of others. To hold otherwise is to make police officers the guarantors of the safety of all citizens. As guarantors, police officers would be forced to act as insurance companies, paying out money to anyone harmed by criminal acts. In such a world, police officers would be inclined, if not required, to place everyone into protective custody. Certiorari should be denied in this case because the decision of the lower court reflects sound public policy.

III. No Conflict Exists Among the Circuits.

Petitioner has failed to allege that any conflict exists among the circuits on the issue of a state actor's liability for failure to protect a citizen from criminal acts. The

petition for writ of certiorari should be denied because there is no conflict among the circuits on the issue before this Court.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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November 1991